

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Peter C. JOHNSON II et al.	§	Confirmation No.:	1025
		§		
Serial No.:	10/765,519	§	Group Art Unit:	2143
		§		
Filed:	01/27/2004	§	Examiner:	Mark D. Fearer
		§		
For:	Instant Messaging HTTP	§	Docket No.:	200206870-1
	Gateway	§		

APPEAL BRIEF

Mail Stop Appeal Brief – Patents

Date: February 23, 2009

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby submit this Appeal Brief in connection with the above-identified application. A Notice of Appeal was electronically filed on December 22, 2008.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas. HPDC is a wholly owned affiliate of Hewlett-Packard Company (HPC). The Assignment from the inventors to HPDC was recorded on January 27, 2004, at Reel/Frame 014936/0916.

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II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Originally filed claims: 1-27.
Claim cancellations: 4, 13, 23 and 27.
Added claims: None.
Presently pending claims: 1-3, 5-12, 14-22 and 24-26.
Presently appealed claims: 1-3, 5-12, 14-22 and 24-26.

IV. STATUS OF THE AMENDMENTS

An amendment to claims 24-26 was filed on February 20, 2009. The amendment was filed after filing the Notice of Appeal but prior to filing this Appeal Brief. In a phone call, the Examiner indicated to the undersigned that the amendment would be entered, because the amendment would dispose of a 35 U.S.C. § 101 rejection, thereby placing the claims in better form for appeal. Thus, this Appeal Brief assumes entry of the amendment.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Various embodiments of the invention are described below. The scope of disclosure is not limited by the descriptions of the embodiments that follow. Citations to the specification have been provided to demonstrate where support may be found in the specification for various parts of the invention. Additional support may be found elsewhere in the application.

Appellants' contribution is directed to an instant messaging system whereby instant messaging users are able to obtain various types of information from hypertext transfer protocol (HTTP) servers, back-end databases and other data stores. Fig. 1; p. 4, ll. 3-18. Claim 1 is directed to a system that comprises an HTTP gateway (100) adapted to establish a communication link with an HTTP server (300). Fig. 1; p. 5, ll. 11-25. The system also comprises an instant messaging communication subsystem (110, 200) adapted to enable communication between a plurality of instant messaging user interfaces (210) coupled to the instant messaging communication subsystem (110, 200). Fig. 1; p. 4, ll. 12-18. The HTTP gateway (100) establishes a communication link with the instant messaging communication subsystem (110, 200). Fig. 1; p. 4, ll. 3-5. The HTTP gateway (100) is adapted to receive commands from the instant messaging user interfaces (210), convert the commands to HTTP requests, send the HTTP requests to the HTTP server (300), receive HTTP responses to the HTTP requests from the HTTP server (300), and send the HTTP responses to the instant messaging user interfaces (210) via the instant messaging communication subsystem (110, 200). Fig. 1; p. 5, ll. 11-25. The HTTP gateway (100) selects the instant messaging communication subsystem (110, 200) from among a plurality of instant messaging communication subsystems using a configuration file (340) of the HTTP gateway (100) stored on the system. Figs. 1 and 3; p. 8, l. 28 – p. 9, l. 10.

Dependent claim 9 is directed to an HTTP gateway that extracts text portions of the HTTP responses and communicates the text portions to the instant messaging user interfaces. P. 5, ll. 21-25.

Claim 10 is directed to a method that includes transmitting commands from a plurality of instant messaging user interfaces (210) to an HTTP gateway (100) via an instant messaging communication subsystem (110, 200), converting the commands to HTTP requests, transmitting the HTTP requests to an HTTP server (300), generating HTTP responses to the HTTP requests, and transmitting the HTTP responses to the instant messaging user interfaces (210) via the instant messaging communication subsystem (110, 200). Fig. 1; p. 5, ll. 11-25. Transmitting commands from the plurality of instant messaging user interfaces (210) to the HTTP gateway (100) comprises accessing a configuration file (340) to determine with which of a plurality of instant messaging communication subsystems the gateway (100) establishes said communication link. Figs. 1 and 3; p. 8, l. 28 – p. 9, l. 10.

Dependent claim 17 is directed to extracting text portions of the HTTP responses and communicating the text portions to the instant messaging user interfaces. P. 5, ll. 21-25.

Claim 18 is directed to a system that comprises means (p. 5, ll. 11-25) for establishing a communication link between an HTTP gateway (100) and an HTTP server (300). Fig. 1; p. 5, ll. 11-25. The system also includes means (p. 5, ll. 11-25) for transmitting commands from a plurality of instant messaging user interfaces (210) coupled to an instant messaging communication subsystem (110, 200) to the HTTP gateway (100) via at least one instant messaging bot (110). Fig. 1; p. 5, ll. 11-25. The system further comprises means (p. 5, ll. 11-25) for converting the commands to HTTP requests, means (p. 5, ll. 11-25) for transmitting the HTTP requests to the HTTP server, means (p. 5, ll. 11-25) for generating HTTP responses to the HTTP requests and means (p. 5, ll. 11-25) for transmitting the HTTP responses via the at least one instant messaging bot (110) to the instant messaging user interfaces (210). *Id.* The HTTP gateway (100) selects the instant messaging communication subsystem (110, 200) from among a plurality of instant messaging communication subsystems using a configuration file (340) of the HTTP gateway (100) stored on the system. Figs. 1 and 3; p. 8, l. 28 – p. 9, l. 10.

Claim 21 is directed to a gateway (100) that comprises a CPU (310) and a storage device (320) coupled to the CPU (310) and containing executable code (330). Figs. 1 and 3; p. 8, l. 28 – p. 9, l. 10. Upon executing the code (330), the CPU (310) receives commands from instant messaging user interfaces (210), converts the commands to HTTP requests, sends the HTTP requests to an HTTP server (300), receives HTTP responses from the HTTP server (300), and sends the HTTP responses to the instant messaging user interfaces (210) via an instant messaging communication subsystem (110, 200). *Id.* and Fig. 1; p. 5, ll. 11-25. The gateway (100) also includes a configuration file (340), wherein the CPU (310) accesses data in the configuration file (340) to determine with which of a plurality of instant messaging subsystems the gateway (100) establishes a communication link. Figs. 1 and 3; p. 8, l. 2 – p. 9, l. 10. The configuration file (340) is usable to determine to which of a plurality of HTTP servers (300) the gateway (100) sends the HTTP requests. *Id.*

Claim 24 is directed to a computer-readable medium (320) containing software (330) that, when executed by a processor (310), causes the processor (310) to receive commands from a plurality of instant messaging user interfaces (210), convert the commands to HTTP requests, transmit the HTTP requests to an HTTP server (300), receive HTTP responses from the HTTP server (300), and transmit the HTTP responses to the instant messaging user interfaces (210) via an instant messaging communication subsystem (110, 200). Fig. 1; p. 5, ll. 11-25; Fig. 3; p. 8, l. 28 – p. 9, l. 10. Receiving commands from or transmitting HTTP responses to the plurality of instant messaging user interfaces (210) comprises accessing a configuration file (340) to determine with which of a plurality of instant messaging communication subsystems to establish a communication link. *Id.*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claim 24 is directed to statutory subject matter under 35 U.S.C. § 101.

Whether the Examiner erred in rejecting claims 1, 3, 5, 7-8, 10, 12 and 15-16 under 35 U.S.C. § 102(e) as anticipated by Yairi et al. (U.S. Pub. No. 2004/0078424, "Yairi").

Whether the Examiner erred in rejecting claims 2, 6, 9, 11, 14, 17-22 and 24-26 under 35 U.S.C. § 103(a) as obvious under the combination of Yairi and Kay et al. (U.S. Pat. No. 7,146,404, "Kay").

VII. ARGUMENT

A. Claim 24 is directed to statutory subject matter under 35 U.S.C. § 101 because it recites a computer-readable storage medium.

The Office Action dated 9/23/2008 rejected claim 24 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. The Examiner asserted that because the claim is directed to software, and further because the claim fails to recite “a computer-readable medium,” the claimed subject matter is non-statutory.

MPEP § 2106.01 is authoritative on the patentability of computer-related subject matter. Appellants respectfully submit to the Board that the Examiner misunderstands the spirit of this portion of the MPEP. Specifically, this portion of the MPEP explains what constitutes “descriptive material” and rightly states that descriptive material is non-statutory when it is claimed as descriptive material *per se*. However, this portion of the MPEP goes on to declare that “[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” The MPEP does not appear to require a verbatim reproduction of the term “computer-readable medium” in a claim that comprises descriptive material in order for the claim to be statutory. Rather, the MPEP simply appears to require that the descriptive material be recorded on “some” computer-readable medium – i.e., any suitable computer-readable medium. Such a computer-readable medium may include, for example, a “storage device” comprising software that is executable by a processor, as claimed. Recitation of the precise term “computer-readable medium” is not required.

However, in the spirit of cooperation and expedition of prosecution, Appellants have amended claim 24 (and the claims depending on claim 24) to dispose of the 35 U.S.C. § 101 rejection. In a phone call on February 11, 2009, the Examiner assured the undersigned that such an amendment to claim 24 would be entered and that the amendment would certainly dispose of the 35 U.S.C. § 101 rejection. Because Appellants have complied with the Examiner’s request,

Appellants respectfully ask the Board to dispose of the 35 U.S.C. § 101 rejection against claim 24.

B. Summary of relevant portion of Yairi.

Referring to Fig. 1 of Yairi, reproduced below for the Board's convenience, Yairi teaches a technique whereby an instant messaging (IM) client 113, 115, 117 interface with a common mobile IM server 111. In turn, the mobile IM server 111 enables each IM client to access one of a plurality of web service providers 121, 123, 125. Abstract. The system shown in Fig. 1 employs only a single mobile IM server 111.

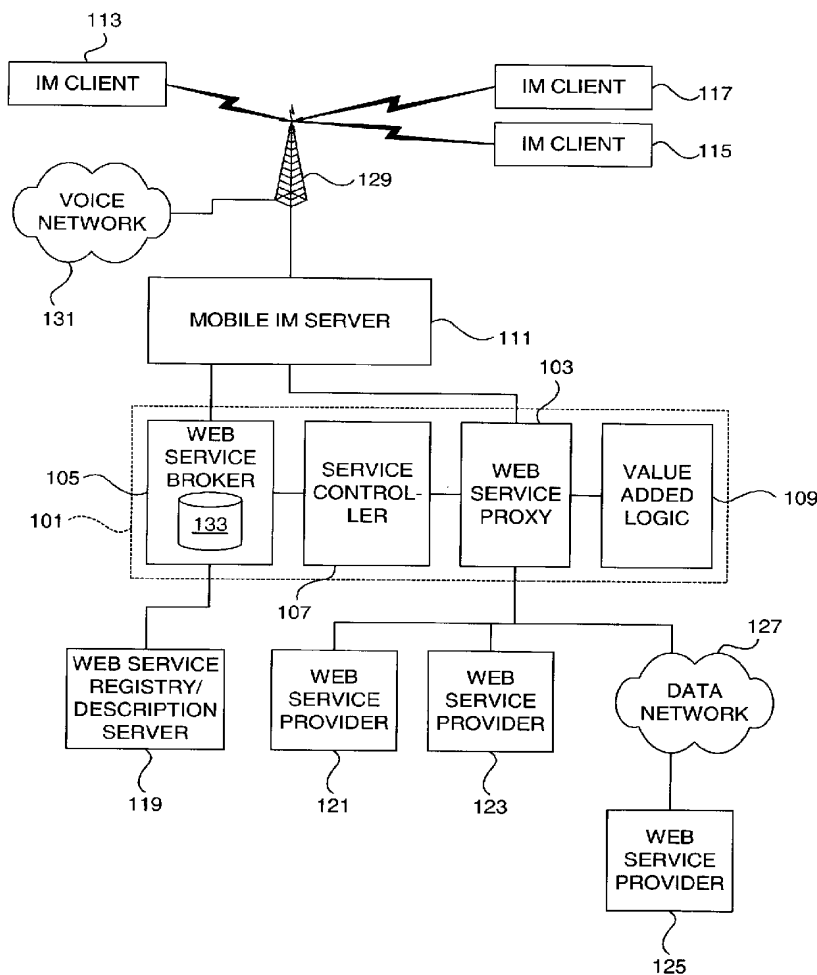


Figure 1

- C. The Examiner erred in rejecting claims 1, 3, 5, 7-8, 10, 12 and 15-16 under 35 U.S.C. § 102(e) as anticipated by Yairi at least because Yairi fails to teach selection from among a plurality of instant messaging communication subsystems.

1. Claims 1, 3, 5, 7-8

The Office Action dated 9/23/2008 rejects claims 1, 3, 5 and 7-8 under 35 U.S.C. § 102(e) as allegedly anticipated by Yairi. Appellants respectfully submit to the Board that the Examiner's rejection is erroneous at least because Yairi fails to teach or even suggest "wherein the HTTP gateway selects said instant messaging communication subsystem from among a plurality of instant messaging communication subsystems," as required by claim 1.

The Examiner maps this claim limitation to components found in Fig. 1 of Yairi, which is reproduced below for the Board's convenience.

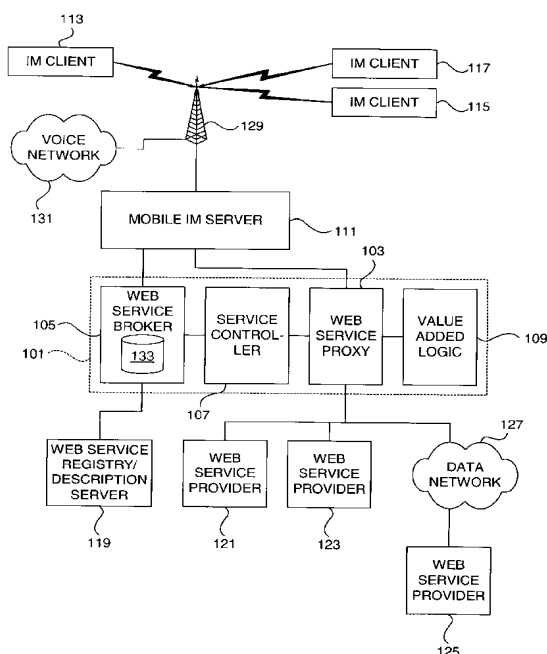


Figure 1

Although the Examiner's rejection provides sparse detail, Appellants believe that the Examiner maps the claimed "instant messaging communication subsystem" to Yairi's mobile IM server 111. Paragraph [0023] forms Appellants' basis for this belief: "The IM client application allows a user of the mobile terminal [113, 115 or 117] to engage in [instant messaging] conversation with one or more other IM users via mobile IM server 111..." (alterations added). Although the Examiner apparently considers the claimed "instant messaging communication

subsystem” to be analogous to mobile IM server 111, Yairi’s system does not have the ability to “select[] said instant messaging communication subsystem from among a plurality of instant messaging communication subsystems,” because Yairi only discloses a **single** mobile IM server 111. For this reason alone, the Examiner erred in rejecting claim 1 as anticipated by Yairi.

However, even if, *arguendo*, Yairi did teach a plurality of mobile IM servers 111 (which Appellants deny), Yairi still does not teach or suggest selecting from among a plurality of such mobile IM servers 111 “using a configuration file of the HTTP gateway stored on the system,” as required by claim 1. In fact, it is not even apparent from Yairi’s figures and description **why** one would need to select from among a plurality of mobile IM servers 111 if they did exist. Further still, even a cursory glance at Yairi’s Fig. 1 immediately reveals to one of ordinary skill that Yairi’s system is not adapted to interface with multiple mobile IM servers 111. Instead, the entire system, from the web service provider 125 to the IM clients 113, 115, 117, appears to be designed to interact with only the mobile IM server 111. For at least these additional reasons, the Examiner erred in rejecting claim 1 as anticipated by Yairi.

The Examiner does refer to paragraph [0040] of Yairi as teaching this limitation. However, paragraph [0040] of Yairi only teaches the selection of a web service (e.g., web service provider 121, 123, 125), **not** the selection of an instant messaging communication subsystem **as such subsystems are defined in the claim.**

Finally, Appellants respectfully direct the Board’s attention to the fact that many limitations in claim 1 are restricted to Hypertext Transfer Protocol, or HTTP. Yairi makes no mention of HTTP. It appears that the Examiner is assuming that Yairi uses HTTP. However, this is an inappropriate assumption, because countless alternative messaging protocols may be used in place of HTTP, such as SMTP, FTP, etc. Because the Examiner cannot make such an inappropriate assumption, particularly in an anticipation rejection, the Examiner further erred in rejecting claim 1 as anticipated by Yairi.

Because the Examiner erred in rejecting claim 1 as anticipated by Yairi, the Examiner also erred in rejecting claims 3, 5 and 7-8 as anticipated by Yairi.

2. Claims 10, 12, 15-16

Independent claim 10 stands rejected as allegedly anticipated by Yairi. Claim 10 requires that “transmitting commands from the plurality of instant messaging user interfaces to the HTTP gateway comprises accessing a configuration file to determine with which of a plurality of instant messaging communication subsystems the gateway establishes said communication link.” As explained above with reference to claim 1, there are a number of reasons why Yairi fails to teach or even suggest such a limitation. Appellants respectfully reiterate each of those reasons for claim 10. Thus, the Examiner erred in rejecting claim 10 as anticipated by Yairi. Because the Examiner erred in rejecting claim 10 as anticipated by Yairi, the Examiner also erred in rejecting claims 12 and 15-16 as anticipated by Yairi.

D. The Examiner erred in rejecting claims 2, 6, 9, 11, 14, 17-22 and 24-26 under 35 U.S.C. § 103(a) as obvious under the combination of Yairi and Kay

1. Claims 2, 6, 9, 11, 14, 17

Claims 2, 6, 9, 11, 14 and 17 stand rejected as allegedly obvious under Yairi in view of Kay. As explained above, the Examiner erred in rejecting these claims as anticipated by Yairi. Kay fails to satisfy Yairi’s deficiencies. Thus, the Examiner erred in rejecting these claims as obvious under Yairi in view of Kay.

2. Claims 18-22

Claims 18-22 stand rejected as allegedly obvious under Yairi in view of Kay. Independent claim 18 requires “wherein the HTTP gateway selects said instant messaging communication subsystem from among a plurality of instant messaging communication subsystems using a configuration file of the HTTP gateway stored on the system.” As explained above with reference to claim 1, Yairi fails to teach or suggest such a limitation. Further, Kay fails to satisfy Yairi’s deficiencies. Thus, the Examiner erred in rejecting independent claim 18 and dependent claims 19-22 as obvious under Yairi in view of Kay.

3. Claims 24-26

Claims 24-26 stand rejected as allegedly obvious under Yairi in view of Kay. Independent claim 24 requires "wherein receiving commands from or transmitting HTTP responses to the plurality of instant messaging user interfaces comprises accessing a configuration file to determine with which of a plurality of instant messaging communication subsystems to establish a communication link." As explained above with reference to claim 1, Yairi fails to teach or suggest such a limitation. Further, Kay fails to satisfy Yairi's deficiencies. Thus, the Examiner erred in rejecting independent claim 24 and dependent claims 25-26 as obvious under Yairi in view of Kay.

E. Conclusion

For the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Previously presented) A system, comprising:
an HTTP gateway adapted to establish a communication link with an HTTP server; and
an instant messaging communication subsystem adapted to enable communication between a plurality of instant messaging user interfaces coupled to the instant messaging communication subsystem;
wherein, the HTTP gateway establishes a communication link with the instant messaging communication subsystem and wherein the HTTP gateway is adapted to receive commands from the instant messaging user interfaces, convert the commands to HTTP requests, send the HTTP requests to the HTTP server, receive HTTP responses to the HTTP requests from the HTTP server, and send the HTTP responses to the instant messaging user interfaces via the instant messaging communication subsystem;
wherein the HTTP gateway selects said instant messaging communication subsystem from among a plurality of instant messaging communication subsystems using a configuration file of the HTTP gateway stored on the system.
2. (Previously presented) The system of claim 1, further comprising at least one instant messaging bot, wherein the HTTP gateway is coupled to the instant messaging communication subsystem via the at least one instant messaging bot and the instant messaging bot receives the commands from the instant messaging user interfaces and sends HTTP responses to the user interfaces via the instant messaging communication subsystem.
3. (Original) The system of claim 1, further comprising a back-end database connected to the HTTP server, wherein the HTTP server is adapted to query the back-end database in preparing the HTTP responses.

4. (Canceled).
5. (Previously presented) The system of claim 1, wherein the HTTP gateway further comprises a configuration file, and further wherein the configuration file is usable to determine with which of a plurality of HTTP servers the gateway establishes said communication link.
6. (Original) The system of claim 1, wherein the HTTP gateway is adapted to map the HTTP requests to specific paths on the HTTP server.
7. (Original) The system of claim 1, wherein the HTTP gateway polls the instant messaging communication subsystem for the commands from the instant messaging user interfaces.
8. (Original) The system of claim 1, wherein conversion of commands from instant messaging user interfaces into the HTTP requests comprises creation of form variables by the HTTP gateway based on the commands.
9. (Original) The system of claim 1, wherein the HTTP gateway extracts text portions of the HTTP responses and communicates the text portions to the instant messaging user interfaces.
10. (Previously presented) A method, comprising:
 - transmitting commands from a plurality of instant messaging user interfaces to an HTTP gateway via an instant messaging communication subsystem;
 - converting the commands to HTTP requests;
 - transmitting the HTTP requests to an HTTP server;
 - generating HTTP responses to the HTTP requests; and
 - transmitting the HTTP responses to the instant messaging user interfaces via the instant messaging communication subsystem;

wherein transmitting commands from the plurality of instant messaging user interfaces to the HTTP gateway comprises accessing a configuration file to determine with which of a plurality of instant messaging communication subsystems the gateway establishes said communication link.

11. (Original) The method of claim 10, wherein transmitting commands from a plurality of instant messaging user interfaces comprises receiving the commands via an instant messaging bot and forwarding the commands from the bot to the HTTP gateway.

12. (Original) The method of claim 10, wherein generating HTTP responses to the HTTP requests comprises querying a back-end database.

13. (Canceled).

14. (Original) The method of claim 10, wherein transmitting the HTTP requests to the HTTP server comprises mapping the HTTP requests to specific paths on the HTTP server.

15. (Original) The method of claim 10, wherein transmitting commands from a plurality of instant messaging user interfaces to the HTTP gateway comprises polling the instant messaging communication subsystem for the commands.

16. (Original) The method of claim 10, wherein converting the commands to HTTP requests comprises creating form variables by the HTTP gateway based on the commands.

17. (Original) The method of claim 10, wherein transmitting the HTTP responses to the instant messaging user interfaces comprises extracting text portions of the HTTP responses and communicating the text portions to the instant messaging user interfaces.

18. (Previously presented) A system comprising:
means for establishing a communication link between an HTTP gateway and an HTTP server;
means for transmitting commands from a plurality of instant messaging user interfaces coupled to an instant messaging communication subsystem to the HTTP gateway via at least one instant messaging bot;
means for converting the commands to HTTP requests;
means for transmitting the HTTP requests to the HTTP server;
means for generating HTTP responses to the HTTP requests; and
means for transmitting the HTTP responses via the at least one instant messaging bot to the instant messaging user interfaces;
wherein the HTTP gateway selects said instant messaging communication subsystem from among a plurality of instant messaging communication subsystems using a configuration file of the HTTP gateway stored on the system.

19. (Original) The system of claim 18, wherein generating HTTP responses to the HTTP requests comprises a means for querying a back-end database.

20. (Original) The system of claim 18, wherein transmitting the HTTP requests to the HTTP server comprises a means for mapping the HTTP requests to specific paths on the HTTP server.

21. (Previously presented) A gateway, comprising:
a CPU;
a storage device coupled to the CPU and containing executable code;
wherein, upon executing the code, the processor receives commands from
instant messaging user interfaces, converts the commands to
HTTP requests, sends the HTTP requests to an HTTP server,
receives HTTP responses from the HTTP server, and sends the
HTTP responses to the instant messaging user interfaces via an
instant messaging communication subsystem;
a configuration file, wherein the CPU accesses data in the configuration
file to determine with which of a plurality of instant messaging
subsystems the gateway establishes a communication link;
wherein the configuration file is usable to determine to which of a plurality
of HTTP servers the gateway sends said HTTP requests.
22. (Original) A gateway as recited in claim 21, wherein the CPU further
comprises executable code for an instant messaging bot, wherein the instant
messaging bot receives commands from the instant messaging user interfaces
and sends HTTP responses to the users interfaces via the instant messaging
communication subsystem.
23. (Canceled).
24. (Previously presented) A computer-readable medium containing software
that, when executed by a processor, causes the processor to:
receive commands from a plurality of instant messaging user interfaces;
convert the commands to HTTP requests;
transmit the HTTP requests to an HTTP server;
receive HTTP responses from the HTTP server; and
transmit the HTTP responses to the instant messaging user interfaces via
an instant messaging communication subsystem;

wherein receiving commands from or transmitting HTTP responses to the plurality of instant messaging user interfaces comprises accessing a configuration file to determine with which of a plurality of instant messaging communication subsystems to establish a communication link.

25. (Previously presented) A computer-readable medium as recited in claim 24, wherein receiving commands from a plurality of instant messaging user interfaces comprises receiving the commands via an instant messaging bot.

26. (Previously presented) A computer-readable medium as recited in claim 24, wherein receiving HTTP responses from the HTTP server comprises querying a back-end database.

27. (Canceled).

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.